

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

BROCK DAVID SWENSON, )  
Petitioner, ) No. 11cv2014 EJM  
vs. ) ORDER  
STATE OF IOWA, )  
Respondent. )

This matter is before the court on respondent's resisted Motion to Dismiss, filed June 21, 2011. Granted.

As noted in the court's order of June 6, 2011, petitioner brings this action to raise a Double Jeopardy challenge to retrial in the Iowa District Court for Winneshiek County. Petitioner asserts that he was a defendant in a trial for domestic assault, and upon motion therein by respondent, the matter ended in a mistrial over his objection. Petitioner sought an interlocutory appeal and discretionary review asserting that retrial is foreclosed by the Double Jeopardy Clause of the US Constitution, which was denied by the Iowa Supreme Court.

Respondent seeks dismissal of the Petition without prejudice, asserting that petitioner is not in state custody, his claim has not been properly exhausted, and his claim is not ripe for review. Additionally, respondent asserts the Petition is without merit.

The court is satisfied that petitioner is "in custody" within the meaning of 28 USC §2254(a). Justices of Boston Mun. Court v. Lydon, 466 US 294, 300-301 (1984). Additionally, while a claimed procedural bar is ordinarily first resolved, judicial economy sometimes dictates reaching easily resolvable merits. Barrett v. Acevedo, 169 F3d 1155, 1162 (8<sup>th</sup> Cir. 1999). For the reasons set forth by the Iowa District Court In and For Winneshiek County in its ruling/order of August 27, 2010 (docket #4-2), it is the court's view that the "manifest necessity" standard is satisfied for declaring a mistrial, see Renico v. Lett, 130 S Ct. 1855 (2010), and that the instant Double Jeopardy argument is without merit.

It is the court's view that the standards for a certificate of appealability are not met, see 28 USC §2253(c)(2), and therefore no certificate of appealability will issue.

It is therefore

ORDERED

Dismissed.

A certificate of appealability shall not be issued.

December 16, 2011.

  
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Edward J. McManus, Judge  
UNITED STATES DISTRICT COURT